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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. |
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09/297,486 06/14/99 MARTIN

J GJE-30

EXAMINER

HM12/0807

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ART UNIT

PAPER NUMBER

1632

DATE MAILED:

08/07/01

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary

Application No.

09/297,486

Applicant(s)

MARTIN ET AL.

Examiner

Richard Schnizer

Art Unit

1632

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-36 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☐ Claim(s) ____ is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☒ Claim(s) 1-36 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on ____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) ____.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

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DETAILED ACTION

The art unit and Examiner to which this application is assigned have changed. Further correspondence should be directed to Examiner Richard Schnizer, art unit 1632.

A response to restriction requirement was received and entered on 10/20/00. A Sequence Listing was received and entered as Paper No. 11 on 5/29/01. The restriction requirement issued on 9/25/00 is vacated in favor of the following restriction requirement.

Election/Restrictions

Restriction is required under 35 U.S.C. 121 and 372.

This application contains the following inventions or groups of inventions which are not so linked as to form a single general inventive concept under PCT Rule 13.1.

In accordance with 37 CFR 1.499, applicant is required, in response to this action, to elect a single invention to which the claims must be restricted.

Group I, claim(s) 1-8, 14, 15 and 37, drawn to methods of treating or preventing intimal hyperplasia by administration of a VEGF receptor agonist.

Group II, claim(s) 1-9, 14, 15, and 37, drawn to a method of treating or preventing intimal hyperplasia by administration of a nucleic acid encoding a VEGF receptor agonist.

Group III, claim(s) 10-13, 16-36, and 38, drawn to an implant for use in delivery of a therapeutic agent in vivo.

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Group IV, claim(s) 14, 15, and 37, drawn to methods of therapy for a condition that can be treated or prevented by stimulation of NO or prostacyclin production, by administering nitric oxide synthase to a person or animal.

Group V, claim(s) ^{14, 15, 37}, drawn to methods of therapy for a condition that can be treated or prevented by stimulation of NO or prostacyclin production, by administering a nucleic acid encoding nitric oxide synthase to a person or animal..

The inventions listed as Groups I-V do not relate to a single general inventive concept under PCT Rule 13.1 because, under PCT Rule 13.2, they lack the same or corresponding special technical features for the following reasons: The only technical feature linking all of the claimed inventions is considered to be the delivery of a therapeutic agent to a blood vessel *in vivo*. However, this technical feature cannot be a special technical feature under PCT Rule 13.2 because it does not represent a contribution over the prior art. For example US Patent 5,540,928 to Hanson, issued 6/30/96 discloses methods of delivering therapeutic agents to blood vessels *in vivo*.

The special technical feature of group I is considered to be a method of treating or preventing intimal hyperplasia by administration of a VEGF receptor agonist

The special technical feature of group II is considered to be method of treating or preventing intimal hyperplasia by administration of a nucleic acid encoding a VEGF receptor agonist

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The special technical feature of group III is considered to be an implant for use in delivery of a therapeutic agent in vivo.

The special technical feature of group VI is considered to be a method of therapy for a condition that can be treated or prevented by stimulation of NO or prostacyclin production, by administering nitric oxide synthase to a person or animal.

The special technical feature of group V is considered to be a method of therapy for a condition that can be treated or prevented by stimulation of NO or prostacyclin production, by administering a nucleic acid encoding nitric oxide synthase to a person or animal..

Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).

Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a petition under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(I).

Any inquiry concerning this communication or earlier communications from the examiner(s) should be directed to Richard Schnizer, whose telephone number is 103-306-5441. The examiner can normally be reached Monday through Friday between the hours of 6:20 AM and 3:50 PM. The examiner is off on alternate Fridays, but is usually in the office anyway.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Karen Hauda, can be reached at 703-305-6608. The FAX numbers for art unit 1632 are 703-308-4242, and 703-305-3014.

Inquiries of a general nature or relating to the status of the application should be directed to the Patent Analyst Patsy Zimmerman whose telephone number is 703-308-8338.

Deborah Crouch

DEBORAH CROUCH
PRIMARY EXAMINER
GROUP 1800 *1630*

Richard Schnizer, Ph.D.